

Background document

for the re-drafting of the proposed Protocol on Carpathian Cultural Heritage and Traditional Knowledge to the Framework Convention on the Protection and Sustainable Development of the Carpathians

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Objective of the document

The following background document has been prepared, pursuant to Decision COP5/11 para 4., for the purposes of re-drafting the text of the proposed draft Protocol concerning cultural heritage and traditional knowledge to the Framework Carpathian Convention, with the aim to facilitate further international as well as in-country consultations that might be required. Furthermore, the document (with several Annexes attached) should inspire the participants, and facilitate discussions at the coming next fifth meeting of the Working Group on Cultural Heritage and Traditional Knowledge (WG Cultural Heritage), to be hosted by the Hungarian Presidency in March 2018 in Hungary. It should be noted, that the meeting of WG Cultural Heritage is organized during the European Year of Cultural Heritage 2018¹.

Cultural heritage in the Carpathian Convention legislation

The Carpathian Convention is the first international agreement directly related to the cultural heritage of the Carpathian region. Pursuant to **Article 11 Cultural heritage and traditional knowledge** *the Parties shall pursue policies aiming at preservation and promotion of the cultural heritage and of traditional knowledge of the local people, crafting and marketing of local goods, arts and handicrafts. The Parties shall aim at preserving the traditional architecture, land-use patterns (which largely contributed to the formation of the cultural landscape of the region), local breeds of domestic animals and cultivated plant varieties, and sustainable use of wild plants in the Carpathians.*

¹ Decision (EU) 2017/864 of the European Parliament and of the Council of 17 May 2017 on a European Year of Cultural Heritage (2018) <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017D0864>

Furthermore, provisions on the preservation and promotion of the cultural heritage are present in several thematic Protocols (Protocols on conservation and sustainable use of biological and landscape diversity, on sustainable forest management, on sustainable tourism, and on sustainable agriculture and rural development) to the Framework Carpathian Convention. [\[for more details please refer to Annex No 1 concerning the legal background\]](#)

[Secretariat explanatory note 1 - on the synergy of different sectoral policies of the Parties, and different thematic Protocols to the Convention, corresponding to these sectoral policies.](#)

Article 11 of the Convention (like its other Articles) does include issues relevant for several different sectoral policies of the Parties. One of the important added values of the Convention is to build upon, and benefit from synergies between different sectoral policies of the Parties. Consequently, the contents of almost each thematic Article intentionally falls under the competencies of several ministries, and shall result in their involvement, closer interactions and cooperation, aimed at the accomplishment of Protocol's objectives as a result of a joint harmonized effort. The above approach is explicitly repeated in all thematic Protocols adopted so far, always calling for the integration of its objectives into other sectoral policies. Consequently, a synergy of different thematic Protocols to the Convention is expected and necessary for the achievement of the objectives of the Convention, and for the coherence of the Convention legislation.

[Secretariat explanatory note 2 - on the unified approach to implementation of substantive Articles](#)

From the legal point of view - the binding force of all Articles of the Convention is equal. As the Parties decided on enhancing the implementation of several other Articles of the Convention by adopting corresponding thematic Protocols (on biological and landscape diversity, on sustainable forestry, tourism, transport, agriculture and rural development), the implementation of Article 11 on cultural heritage probably deserves the same methodological and legislative approach as in the case of other Articles.

[The history and progress of work on the proposed protocol](#)

2006

Decision COP1/6 para 2 The Conference of the Parties *decides to support the establishment of a Working Group on cultural heritage and traditional knowledge under the Carpathian Convention Implementation Committee.*

2008

Decision COP2/8 para 3 The Conference of the Parties *decides to develop and establish a "Carpathian Heritage Inventory", as a tool for the identification, protection and promotion of Carpathian Heritage.*

Decision COP2/8 para 4 The Conference of the Parties *encourages Parties to collaborate and support the development of the Carpathian Heritage Inventory.*

2011

Decision COP3/7 para 1 The Conference of the Parties *being aware of the unique values of cultural heritage, recommends to support the creation of the Cultural Heritage Inventory and Programme of Activities.*

2013

The CC Working Group on Cultural Heritage and Traditional Knowledge meets twice in Poland (in May 2013 in Krynica, and in September 2013 in Orelec) to discuss the draft text of the the proposed Protocol.

2014

The CC Working Group on Cultural Heritage and Traditional Knowledge meets on the invitation of the Government of the Slovak Republic (in March 2014 in Bratislava) to discuss the draft text of the proposed Protocol, and comments previously provided by the Parties.

Decision COP4/7 para 4 The Conference of the Parties *encourages the Working Group on Cultural Heritage and Traditional Knowledge to further develop, in consultation with relevant institutions and local stakeholders, the draft Protocol on Cultural Heritage and a proposal for a corresponding Strategic Action Plan and takes note in this respect of the Working Group's Road Map, and requests the Secretariat to facilitate the process.*

The High Level Summit at COP4 adopted the Ministerial Declaration on Cultural Heritage in the Carpathians, which acknowledged *the progress achieved so far towards the development of the draft Protocol on cultural heritage, and the ongoing work by the Working Group on Cultural Heritage and Traditional Knowledge preparing the ground for the future development and implementation of the Protocol.*

2017

Decision COP5/11 para 4. The Conference of the Parties *requests the WG Cultural Heritage to identify priorities for the implementation of Article 11 of the Carpathian Convention and to propose next steps to the CCIC, including the possibility of the development of a redrafted Protocol on Cultural Heritage and Traditional Knowledge.*

[Secretariat explanatory note 3 - on the substantive scope and contents of the proposed protocol](#)

The full substantive contents of Article 11 of the Convention should duly be taken into account when drafting the proposed protocol concerning the cultural heritage, translating the general principles constituted in this Article into more specific substantive obligations.

As Article 11 of the Convention deliberately lists different important components of the cultural heritage (e.g. traditional knowledge, local goods, arts and handicrafts, traditional architecture, land-use patterns, local breeds of domestic animals and cultivated plant varieties, and sustainable use of wild plants) - all the above issues, explicitly mentioned in the Convention, should duly be covered by the proposed protocol concerning the cultural heritage.

[Secretariat explanatory note 4 - on the title of the proposed protocol](#)

Article 11 of the Carpathian Convention, and all COP Decisions always use the term “cultural heritage **and traditional knowledge**”, despite that the UNESCO Convention on Safeguarding Intangible Cultural Heritage perceives traditional knowledge as part of intangible cultural heritage. From the legal point of view - the binding force of both Conventions is equal. Hence, the definition and wording used in the Carpathian Convention cannot be perceived as invalid, even if not fully in line with the aforementioned UNESCO Convention, which does not poses any ‘prevailing force’. Last, but not least, the Carpathian Convention was adopted in May 2003, thus prior to the adoption of the UNESCO Convention in October 2003, while *Lex retro non agit*. Therefore, during the WG Cultural Heritage meeting in May 2013, on the motion of Hungary the term “traditional knowledge” has been added to the title and text of the proposed draft protocol, while in February 2014 Romania supported the use of “traditional knowledge” term in the title and text of the proposed draft protocol.

Brief introduction to the proposed protocol and its provisions

Pursuant to Article 8 of the proposed protocol, the Parties shall encourage cooperation at the international level among their competent authorities, institutions and organisations, and with UNESCO, with regard to the preservation and promotion of the Carpathian cultural heritage. Furthermore, the Parties shall cooperate, where appropriate, on the preparation and submission of **joint applications concerning the inclusion of serial or transboundary properties into relevant UNESCO lists**.

The thematic scope of Chapter III on Specific Measures includes:

- identification and documentation of the cultural heritage and traditional knowledge (Article 9)
- inventory of the cultural heritage and traditional knowledge (Article 10)
- preservation of the traditional architecture (Article 11)
- preservation of cultural landscapes (Article 12)
- preservation of the traditional land-use patterns (Article 13)
- preservation of local breeds of domestic animals and cultivated plant varieties (Article 14)
- sustainable traditional use of wild plants (Article 15)
- promotion of the cultural heritage and traditional knowledge (Article 16)
- promotion of the traditional local products, arts and handicrafts (Article 17)
- awareness raising, education and transmission of the cultural heritage and traditional knowledge (Article 18)
- research on the cultural heritage and traditional knowledge (Article 19)
- exchange of information and experience, capacity building (Article 20)

According to Article 9 of the proposed protocol, the Parties shall establish, maintain and update digital catalogues, repositories and databases concerning the cultural heritage and traditional knowledge of the Carpathians. Article 10 provides for the establishment of the **Carpathian Cultural Heritage Inventory** (pursuant to Decision COP2/8 para 3), which is in line with relevant provisions of other Conventions also in force for the Parties, according to which the identification of the cultural heritage is the duty of each State Party [\[for more details please refer to Annex No 1 concerning the legal background\]](#)

Furthermore, under Article 10 all Parties are encouraged (pursuant to Decision COP2/8 para 4) to consider the nomination of the most valuable, unique and representative elements of the cultural heritage and traditional knowledge of the Carpathians present in their territories for inclusion into the aforementioned Inventory. Pursuant to subsequent proposed Articles - such nomination should result in an obligation for the Parties to ensure preservation of different components of the cultural heritage and traditional knowledge, which have been included in the Carpathian Cultural Heritage Inventory, e.g. objects of the traditional architecture of the Carpathians (Article 11), and areas important for the preservation of cultural landscapes (article 12).

The above solutions proposed in the draft Protocol take into account, that e.g. not all valuable objects and areas, of vital importance for the preservation of the cultural heritage of the Carpathian region, can be nominated by the Parties for the inclusion to the World Heritage List by UNESCO. Hence, the nomination for the Carpathian Cultural Heritage Inventory under the Carpathian Convention could enhance the preservation of these objects and sites by providing international recognition of their exceptional values, in the **absence of the World Heritage status**. Another benefit behind the establishment of the Carpathian Cultural Heritage Inventory could be the elaboration of a 'shadow list' of objects proposed for inclusion into the Tentative Lists by the Parties, under the World Heritage Convention.

Pursuant to Article 16 of the proposed protocol, each Party shall take measures to promote the cultural heritage of the Carpathians as an important asset for sustainable regional and local economic development, which can be achieved e.g. through the development of **cultural tourism**, in particular by supporting the development of **thematic cultural routes and trails**, linking sites where particular elements of the cultural heritage and traditional knowledge of the Carpathians can be experienced, in particular these included in the Carpathian Cultural Heritage Inventory.

[for more details please refer to the text of the revised draft text of the proposed protocol, provided in Microsoft Word document “CHTK Protocol_revised_2018_02_26”]

List of Annexes

Annex 1 - Legal Background (PDF)

Annex 2 - revision 2018 change log table (PDF)

Annex 3 - Implementation versus funding (PDF)

Annex 4 - Carpathian cultural heritage context (PDF)